

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 19/17 OF 2022

RASHID SAID KAUIPE.....APPLICANT

VERSUS

ZOEB F. KADARBHAI 1ST RESPONDENT

MOHAMED ENTERPRISES LIMITED.....2ND RESPONDENT

(Application for extension of time to serve a memorandum and record of appeal to the respondents challenging the judgment of the High Court of Tanzania at Dar es Salaam)

(Malaba, J.)

dated the 30th day of August, 2019

in

Land Appeal No. 20 of 2018

.....

RULING

12th March & 8th April, 2024

RUMANYIKA, JA:.

Before the High Court of Tanzania at Dar es Salaam, Rashid Said Kautipe (“the applicant”) lost in Land Appeal No. 20 of 2018 on 30th August, 2019, where he challenged a decision of the District Land and Housing Tribunal for Temeke at Temeke (“the DLHT”). Before it, the applicant had claimed title of a parcel of land situated at Mbagala Kibondemaji in Dar es Salaam, against the 1st respondent herein and another. However, the applicant could not serve the said copies upon the

respondents within the prescribed time. Thus, he filed the present application.

The application has been made under rule 10 of the Tanzania Court of Appeal Rules, 2019 ("the Rules"). It is supported by an affidavit affirmed by the applicant.

At the hearing of the application, the applicant appeared in person, without representation. The 1st respondent did not enter appearance, although he was duly served on 6th March, 2024, as shown by an affidavit sworn by Salum Edward, the Court Process Server. Its copy is appended on the respective copy of the returned summons. Ms. Neema Maunga learned counsel appeared for the 2nd respondent.

The applicant began by adopting the contents of the notice of motion, the supporting affidavit and his written submission, pursuant to rule 106 (1) of the Rules filed on 9th February, 2022. In his averments at paragraphs 4, 5 and 6 of the supporting affidavit, the applicant states that, immediately after the filling of the appeal and the record, he was indisposed suffering from diabetes and high blood pressure. And, that, he looked for some legal assistance between 1st December and 17th January, 2022, him being a layman. To bolster her point, he cited the

Court's decision in **Ramadhani Nyoni v. M/s Haule & Company Advocates** (1996) T.L.R 72 (unreported). In the circumstances, the applicant urged me to find that, the delay was beyond any human's control, which is a good cause for the granting of extension of time sought. He cited a Court's unreported decision in **Elias Msonde v. R**, Criminal Appeal No. 93 of 2005 to reinforce the point.

It is also alleged that, upon noticing that he is late, as shown above, the applicant filed the present application, about a month later. He thus, asserted that, his failure to serve the documents on the respondents within the prescribed time was not due to his inaction or negligence.

On her part, being cognizant to the fact that, her client, the 2nd respondent, did not file an affidavit in reply, Ms. Maunga argued points of law only. While observing the legal principle, that the Court's power to extend time is discretionary, she contended: **One**; that the applicant has failed to account for each day of the delay of forty-three days, which is an essential element of good cause. She cited our unreported decisions in **A-One Products And Brothers v. Abdallah Almas And 25 Others**, Civil Application No. 586/18 of 2017, where we followed the

Court's decision in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, **two**; that the applicant's plea of ignorance of procedural law, with regard to the timelines for serving the documents is no defence. Further, she asserted that, even if the applicant remained sick until on 1st December, 2021 when he was fine, still the latter did not lodge the application until about a month later, on 17th January, 2022, without any plausible explanation. She also contended that, **Ramadhani Nyoni case** (supra) is distinguishable with the present application, because the former concerned the issue of non-citation of the enabling provision of the law, which is not the case here.

As regards the applicant's ill health as a reason for the delay, Ms. Maunga still questioned the copy of a medical chit attached to the application, for referring to different diseases, thus, inconsistent with the applicant's allegations.

I have considered the contents of the notice of motion, the supporting affidavit and the parties' submissions. The disturbing issue for my consideration is whether the applicant has shown good cause, which is the bottom line for the granting of an extension of time.

It is common knowledge that, there is no fast and harden rule for determining what amounts to good cause. Rather, it is determined on a case to case basis, depending on the obtaining circumstances. See- **Sumry High Class Ltd. And Another v. Musa Shaibu Msangi** (Civil Application No. 403/16 of 2018) [2018] TZCA 281 (22 October 2018: TanzLII).

In the present application, the applicant may have fallen sick, immediately he filed an appeal and the respective record on 1st November, 2021, as averred at paragraph 3 of the supporting affidavit. And that, on that account he was hospitalized on 3rd November, 2021 and he got some medication, as shown in the attached copy of the medical chit. However, it is neither stated that he was admitted in hospital nor is it shown that the applicant continued attending as an outpatient until on 17th January, 2022, when he filed the present application.

Moreover, the applicant may have been a layperson as alleged, thus, ignorant of the procedure and timelines for serving the said copies of documents on the respondent. Nevertheless, on that one, very often than not, the Court has reiterated that ignorance of laws is no excuse.

See- **Omctedari R. Ibrahim v. Ndege Commercial Services Ltd**, Civil Application No. 83/01 of 2020 and **Ngao Godwin Losero v. Julius Mwarabu** (Civil Application No. 10 of 2015) [2016] TZCA 302 (13 October 2016: TanzLII). Moreover, in **Bariki Israel v. R**, Criminal Application No. 4 of 2011 and **Charles Salugi v. R**, Criminal Application No. 3 of 2011 (both unreported), the Court stated that, a prudent and diligent layperson who needs legal assistance should act promptly.

As regards such other legal requirement, it is trite law that, in order an application for extension of time to succeed, the applicant has to account for each day of the delay, however slight it may be. For instance, in **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) , the Court stated that:

"... Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken." (Emphasis added)

In the instant application, the applicant has not accounted for the delay of forty-three days. The days are reckoned from 3rd December, 2021, as averred at paragraph 6 of the supporting affidavit, the applicant

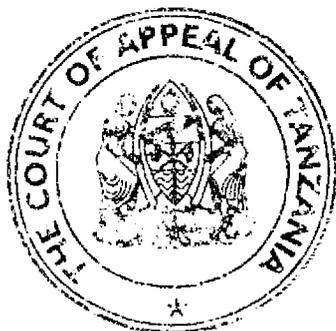
was relieved from the ill health and vainly attempted the service, and 17th January, 2022 when he lodged the present application. It is my considered observation that, Rule 10 of the Rules requires that, no person shall challenge a court's decision only when and where he chooses to do so. For, in a society where good governance is practiced, there can be no room for unpredictable and unpopular legal system. On that account therefore, any party in any judicial proceedings is entitled to know what will happen to him in court this time tomorrow.

In the upshot, the applicant has failed to show good cause to warrant the extension of time order. Consequently, the application is unmerited and dismissed with costs.

DATED at DAR ES SALAAM this 28th March, 2024.

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Ruling delivered this 8th day of April, 2024 in the presence of the applicant present in person, in the absence of the 1st Respondent and in presence of Mr. Peter Mwakabungu, learned counsel for the 2nd Respondent; is hereby certified as a true copy of the original.



F. A. Mtaranja
F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL